

December 13, 1994

Honorable Darolyn H. Lendio
Corporation Counsel
City and County of Honolulu
Honolulu Hale, First Floor
Honolulu, Hawaii 96813

Attention: Arnold B. Abe
Deputy Corporation Counsel

Dear Ms. Lendio:

Re: UIPA Request of United Public Workers for
Personnel Information In Connection with a
Class Action Grievance

This is in reply to a letter dated October 7, 1994, from Deputy Corporation Counsel Arnold B. Abe to the Office of Information Practices ("OIP") requesting an opinion concerning the disclosure of personnel information requested by the United Public Workers ("UPW") in connection with a class action grievance filed against the Department of Health, Division of Emergency Medical Services ("EMS").

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the City and County of Honolulu, Department of Personnel, must furnish the UPW with the personnel files of all Unit 10 employees, sought in connection with a glass action grievance filed by UPW.

FACTS

By letter dated July 11, 1994 to the Honorable Cynthia Bond, Director of Personnel, the UPW, among other things, requested to receive the following information:

OIP Op. Ltr. No. 94-22

- C. Personnel files of all unit 10 employees including all evaluations, record of prior disciplinary actions, including oral or written admonishments and counseling, records of commendations, pay increases, promotions, and leaves.

In Deputy Corporation Counsel Abe's letter to the OIP, he stated that it was the opinion of the Department of Corporation Counsel that the information requested by the UPW is protected from disclosure under the UIPA.

DISCUSSION

Section 92F-12(b)(2), Hawaii Revised Statutes, provides that any provision to the contrary notwithstanding, each agency shall disclose "[g]overnment records which, pursuant to federal law or a statute of this State, are expressly authorized to be disclosed to the person requesting access."

Chapter 89, Hawaii Revised Statutes, contains a provision requiring government agencies to provide labor unions, or exclusive representatives, with information relevant to the processing of a grievance. Section 89-16.5, Hawaii Revised Statutes, provides:

§89-16.5 Access to personal records by an employee organization. Exclusive representatives shall be allowed access to an employee's personal records which are relevant to the investigation or processing of a grievance. The exclusive representative shall not share or disclose the specific information contained in the personal records and shall notify the employee that access has been obtained.

Haw. Rev. Stat. § 89-16.5 (Supp. 1992).¹

¹The term "personal record" is defined in section 92F-2, Hawaii Revised Statutes, to include "any item, collection, or grouping of information about an individual that is maintained by an agency."

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Section 89-16.5, Hawaii Revised Statutes, was created by Act 262, Session Laws of Hawaii 1988, the Act that also created the UIPA. However, the substance of section 89-16.5, Hawaii Revised Statutes, was originally a part of Senate Bill No. 2270, which proposed to amend section 92E-13, Hawaii Revised Statutes, which was repealed by the UIPA. The report of the Senate Committee on Judiciary explained the purpose of Senate Bill No. 2270 as follows:

The purpose of this bill is to limit access to personal records held by the Department of Personnel Services to employee organizations only, prohibit the employee organization from further dissemination of the records accessed, and to require notice to the employee whose records have been accessed.

Presently, employee organizations are allowed, pursuant to collective bargaining agreements, access to an employee's personal records in order to process or investigate that employee's grievance. This bill's provisions would give employee organizations access to personnel files other than the grievant if such access is relevant to the investigation of any grievance by the employee organization.

S. Stand. Comm. Rep. No. 1175-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 1258 (1988) (emphasis added). The provisions of Senate Bill No. 2270 were added to the final draft of H.B. 2002 (proposing the adoption of the UIPA) without explanation.

The OIP has previously advised the Attorney General of the State of Hawaii that the determination of whether an employee's personal records are relevant to the investigation or processing of a grievance lies, at least initially with the Attorney General or the county corporation counsels and county attorneys. The OIP does not have the authority to opine concerning whether records are "relevant" to the investigation or processing of a grievance.

However, since the UPW's class action grievance alleges that the EMS has violated a collective bargaining agreement by retaining derogatory personnel information over two years old, it would

seem indisputable that those portions of the personnel files of employees within Unit 10 that might contain derogatory information would be relevant to the grievance, such as employee evaluations, commendations, and disciplinary information.

Moreover, the personnel files of Unit 10 employees do contain items of information that are designated as "public" government records under sections 92F-12(a)(14), and 92F-14(b)(4), Hawaii Revised Statutes, as amended by Act 191, Session Laws of Hawaii 1993.² Furthermore, in OIP Opinion Letter No. 90-17 (April 24, 1990), we opined that the vacation and sick leave records of State and county employees would be public government records, after the agency segregates or sanitizes information concerning an employee's medical condition, diagnosis, or treatment. It appears that the UPW has requested the leave records of Unit 10 employees, so we suggest that the EMS disclose the annual leave summaries of Unit 10 employees, if the EMS currently maintains copies of such leave summaries.

Finally, it is the opinion of the OIP that Unit 10 employees do not have a significant privacy interest in letters of commendation that they have received. The Texas Attorney General has opined that letters of appreciation or commendation would not be protected from disclosure under an exception in the Texas Open Records Law for records that would constitute a "clearly unwarranted invasion of personal privacy." The Texas Attorney General opined that "brief innocuous, commendatory letters of appreciation to hard working employees with a general statement of unspecified improvements in their positions" did not contain information that "a reasonable person could regard as private." Further, the opinion noted that a "favorable evaluation of an employee by a superior could in an appropriate case be excepted from disclosure," however, "the information must be more personal and detailed than [the commendatory letters at issue] in order to justify a claim of exemption." See Tex. Att'y Gen. Op. ORD 168, 1977 WL 26495 (1977).

²Act 191, Session Laws of Hawaii 1993 amended section 92F-14(b)(4), Hawaii Revised Statutes, to require the public availability of information concerning public employees who have been suspended or discharged for employment-related misconduct, provided that the public employee has exhausted any timely invoked grievance procedure available to the employee.

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Like the Texas Attorney General, we believe that letters of commendation or appreciation can be distinguished from an employee's job performance evaluation, which would generally be protected from public disclosure under sections 92F-14(b)(8) and 92F-13(1), Hawaii Revised Statutes.

CONCLUSION

Under section 89-16.5, Hawaii Revised Statutes, an exclusive representative must be furnished with access to an employee's personal records that are relevant to the investigation or processing of a grievance. Furthermore, under sections 92F-12(a)(14), Hawaii Revised Statutes, certain personnel information about State and county agency employees must be available for public inspection and copying upon request. To the extent that the information sought by the UPW is relevant to the investigation or processing of a grievance, the UPW must be provided with access to an employee's personal records. In addition, the UPW must be provided with access to information that is designated as public information under the UIPA.

Please contact me at 586-1404 if you should have any questions concerning the advice set forth above.

Very truly yours,

Hugh R. Jones
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

HRJ:sc

c: Gary Rodrigues,
President, UPW

Dwight S. Takeno, UPW

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Cynthia Bond
Director of Personnel